

(1991) 04 MP CK 0043

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 1467 of 1986

Prem Kheda

APPELLANT

Vs

Shree Sanatan Dharam Shiksha Samiti and Others

RESPONDENT

Date of Decision : 16-04-1991

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 226
Madhya Pradesh Ashashkiya Shikashan Sanstha (Adhyapakon Tatha Anya
Karmachariyon Ke Vetano Ka Sanday) Adhiniyam, 1978 — Section 6

Citation : (1992) 37 MPLJ 198 : (1992) MPLJ 198

Hon'ble Judges : K.L. Issrani, J;D.M. Dharmadhikari, J

Bench : Division Bench

Advocate : V.S. Shrivastava, for the Appellant; A.K. Khaskalam, for the Respondent

Judgement

D.M. Dharmadhikari, J.

The petitioner who worked as teacher-in-charge in the school managed and administered by respondent Educational Society by name Shri Sanatan Dharam Shiksha Samiti, for a period of about ten years, challenges in this petition the impugned order dated 23-10-1981 (Annexure-L) and the order dated 8-11-1981 (Annexure-B), terminating her sendees from the school.

Law is now settled that a registered educational society, receiving grant-in-aid from the State Government and controlled in the matters of its management and service conditions of its employees, governed by the provisions of an enactment such as, in the present case, by Madhya Pradesh Ashaskiya Shishan Sanstha (Adhyapakon Tatha Anya Karmchariyon Ke Vetano Ka Sandaya) Adhiniyam, 1978 (hereinafter referred to as "the Act"), is amenable to writ jurisdiction of this Court. (See : Francis John Vs. Director of Education and Others,

The petitioner was appointed in the school pursuant to an advertisement and after selection to the post of "teacher-in-charge" by order of appointment issued in the year 1971. A disciplinary enquiry was held against her on charges,

amongst others, of financial irregularities, indiscipline and insubordination. By order passed on 23-10-1981 (Annexure-L), the petitioner was found guilty of the charges levelled against her and by way of punishment, her status as "teacher-in-charge" was taken away. But taking a sympathetic view of the matter on the basis of a letter of apology, submitted by her, it was directed that she would be permitted to continue her service as a teacher in the school. It was directed in the above letter that she might give her option in writing within a period of three days from the date of the order to continue her services in the school as a teacher. On her request the period of her re-joining as a teacher was alleged to have been extended up to 6-11-1981.

By the subsequent impugned order passed on 8-11-1981 (Annexure-B), the respondent society terminated the services of the petitioner as teacher only on the ground that in spite of the opportunity having been given to the petitioner to resume the work in the school as a teacher, on or before 6-11-1981, she failed to report on duty.

The petitioner had earlier challenged her termination in writ petition (M. P. No. 2550 of 1983), which was dismissed summarily on 7-2-1985 with the direction that the appeal preferred by the petitioner under the Act be disposed of within a period of two months. The appeal "preferred by the petitioner under the provisions of the Act now stands dismissed and the action of the Managing Committee confirmed by the Joint Director of Public Instructions, Jabalpur Division, Jabalpur, by its order dated 4-11-1985 (Annexure-V).

The petitioner's case in this petition is that pursuant to the directions of the Managing Committee, terminating her services as "teacher-in-charge" and continuing her services as "teacher" in the school, she had on the due date that is 6-11-1981, submitted a joining report (Annexure-A8), but she was not permitted to resume her duties, nor allowed to sign the attendance register. On 8-11-1981 by the impugned order her services as teacher were terminated. The petitioner had described the action of the Managing Committee as wholly arbitrary and in violation of the provisions of the Act.

The petition was filed in the year 1986 after the decision of the appellate authority. All the respondents, including respondent No. 1, the Society have been duly served with the notice of the petition. Shri L. S. Baghel, advocate has also filed his vakalatnama for respondent No. 1 Society, but no return has been filed controverting the allegations made by the petitioner in the petition including the alleged fact of her reporting on duty on 6-11-1981. No arguments were also addressed on behalf of respondent No. 1 at the time of hearing. The Government Advocate appearing for the State made an attempt to support the action of the Managing Committee and the order passed by the appellate authority.

The only question which needs decision in this petition is whether the termination of petitioner's services first as a "teacher-in-charge" and thereafter as a "teacher" in the school is in accordance with law.

The provisions of the Act control and regulate the actions of the authorities of the schools receiving financial aid from the Government, in the matters including the service conditions of their employees. The provisions of Section 6 protect the teachers of all aided schools against arbitrary and unlawful actions of the management of private schools in the matter of their services. Section 6(a)(iii) as amended by Act No. 24 of 1981 with effect from 20-9-1981 reads as under :-

"6. Prohibition on creation of posts and appointments of staff and termination of services. - Notwithstanding anything contained in any law for the time being in force or any rules, regulations, bylaws, statutes or regulations made thereunder,.....

(a) on and from the appointed date

(i).....

(ii).....

(iii) No teacher or other employee shall be dismissed or removed from service or his services terminated except by an order passed after following such procedure as may be prescribed :

Provided that a teacher or other employee may prefer an appeal against his dismissal, removal or termination, from the service to an appellate authority as the State Government may, by notification, specify within thirty days from "the date of receipt of the order by him and such authority may after holding such enquiry as it may deem fit in the manner prescribed, may either set aside or confirm or modify the said order and pending the disposal of appeal, the appellate authority may also stay the operation of order on such grounds, as it thinks fit."

It may be noticed that the aforesaid provision extending protection against termination of services of a teacher requires the management as an employer to follow "such procedure as is prescribed" before taking action. The procedure referred to in Section 6(a)(iii) of the Act was prescribed by the Rules named Madhya Pradesh Asnaskiya Shikshan Sanstna (Adhyapakon Tatha Anya Karamcharyon Ko Padachyut Karne/Sewa Se Hatane Sambandhi Prakriya) Niyam, 1983 (hereinafter referred to as "the Rules"), which came into force in the year 1983 from the date of their publication in the M. P. Gazette on 27-1-1984. It may be noted that between the interim period i.e. 20-7-1981 the date on which sub-section (iii) of Section 6 was introduced by amendment to the Act and 27-1-1984, that is, the date on which the rules came into force, there was no procedure prescribed for taking action for dismissal, removal or termination of services of a teacher working in the institutions governed by the Act.

The petitioner was terminated, firstly as teacher-in-charge on 23-10-1981 and thereafter as "teacher" on 8-11-1981 without following the procedure prescribed by rules. The question, therefore, is whether prior to the coming into force of the

rules the impugned action of the management in the matter of taking disciplinary action against the petitioner as a teacher of an aided institution governed by the Act, suffers from any legal infirmity.

A registered society which receives grant-in-aid from the Government and controlled in its affairs by the provisions of the Act falls within the definition of "State" under Article 12 of the Constitution of India. The mandate contained in Article 14 of the Constitution of India, therefore, also compels the educational society to act fairly and reasonably in consonance with principles of natural justice in the matter of taking disciplinary actions" against its employees. The principles of natural justice are implicit in the equality clause contained in Article 14 of the Constitution and prohibits arbitrary action on the part of the agencies and instrumentalities of the State falling under Article 12 of the Constitution of India. In our opinion, although no rules containing procedure for taking disciplinary actions against the teachers in aided institutions under the State were in existence on the date of the impugned action, the educational institution being an agency or instrumentality of the State was constitutionally bound to follow the requirement of natural justice and should have afforded a reasonable opportunity of showing cause to the petitioner before taking the impugned action of terminating her services.

In the present case, on the basis of the charge-sheet issued and the enquiry held, the Managing Committee of the respondent society has taken a decision to deprive the petitioner of her status as the "teacher-in-charge" of the school. In some of the written communications, the petitioner has been described as a head-mistress, but in the order of the appellate authority, it has been made clear that in the school run by the society, there was no post of head-mistress duly sanctioned and receiving grant-in-aid for payment of salary of the head-mistress. The teacher-in-charge, as we understand from the terms of her appointment order, was one of the teachers with additional duty to look after the management of the school and for that purpose was allowed additional allowance of Rs. 5/- (Rs. Five) per month. The status of the petitioner, therefore, was of teacher only in the school and on being assigned additional duty of management in-charge of the school, she was getting only some additional allowance.

It is clear from the impugned order (Annexure-L) passed on 23-10-1981 that the only punishment imposed on her on the basis of the charges proved against her was to discontinue her status as "incharge" of the school and deprive her of the additional allowance of Rs. 5/- per month and her power to manage the school as head of the teacher. The result of the above order, however, could not have taken away her status as a "teacher" in the school. In the impugned order dated 23-10-1981, the Managing Committee gave her an option to re-join her duties as a teacher in the school. This direction of the Managing Committee in the. above order, in our opinion, is totally misplaced and in breach of service conditions. The petitioner was already holding the status of a teacher. There could, therefore, be no direction to her to resume duties as a teacher. It may be mentioned that

pending disciplinary proceedings, the petitioner was suspended by order dated 27-5-1981, but since the suspension continued for a period of more than 90 days, the same stood revoked automatically u/s 6(iv) of the Act, read with the Suspension Rules of 1978, named as The M. P. Ashaskiya Shikshan Sanstha (Adhyapakon Tatha Anya Karamcharyan Ko Nilamban) Niyam, 1978. The suspension order of the petitioner was also expressly revoked by order dated 27-5-1981 (Annexure-J) of the District Education Officer, Jabalpur. The petitioner, therefore, on the date of the passing of the impugned order dated 23-10-1981 was already in service as a teacher and was not under suspension. The Managing Committee therefore, could not have directed her to rejoin the duties within a time limit. By the subsequent impugned order dated 8-11-1981, the services of the petitioner as teacher could not have been terminated only on the ground that she failed to re-join as teacher on or before the date 6-11-1981 fixed and communicated to her.

It is also not disputed that before passing the impugned order dated 8-11-1981 (Annexure-B) terminating her services as "teacher" of the school, no show cause notice or charge-sheet or opportunity of hearing, in any manner, was given to the petitioner before taking a prejudicial action against her. It appears to us that not joining the post of teacher in the school constituted misconduct distinct from the misconducts for which she was earlier proceeded within an enquiry and punished by removing her from the post of incharge of the school. Before imposing a second punishment on her of termination, of her status as "teacher" in the school, the principle of natural justice required the Managing Committee of the society to have given her a show cause notice and reasonable opportunity to defend herself against the alleged misconduct. The petitioner, in the impugned order dated 8-11-1981 has been alleged to have absented from duty and failed to report on duty on the due date.

The case of the petitioner in this petition is that she did not report on duty on the due date and had submitted a joining report in writing. Without entering into that controversy whether or not and in fact she joined on the due date, we are of the opinion that the action of the Managing Committee of the society in terminating the petitioner's status as teacher on the alleged ground of her not reporting on due date in the school was in flagrant violation of principles of natural justice. As we have pointed out above, the Managing Committee of an aided institution governed by the Act discharges public functions and being "State" under Article 12 of the Constitution is enjoined by law to follow the principles of natural justice even if there were no rules or procedure prescribed under the Act at the relevant time for taking disciplinary action. The impugned act, therefore, of termination of petitioner's services as teacher on 8-11-1981 deserves to be quashed.

The petitioner's termination of service having been set aside the normal rule is that her status quo has to be restored with all monetary benefits. There can, however, be an exception made in case of a private institution which is financially aided by the State Government. The question, therefore, is whether the

petitioner should also be given the relief of back wages between the date of impugned order of termination in the year 1981 up to the date of her actual reinstatement as teacher in the school.

There is host of correspondence on record exchanged between the petitioner and the Managing Committee of the school prior to and after her termination from service. It appears to us that the petitioner throughout was maintaining a stand that she was entitled to be reinstated on the post of "in-charge" of the school. It appears to us that although she reported for duty, but she was throughout insisting that she be allowed to work as teacher-in-charge. Her conduct in the above respect cannot be said to be completely without blemish. The charges levelled against her of indiscipline, insubordination and financial irregularities have been duly proved and confirmed by the order of the appellate authority. In place of the petitioner, some other teacher must be working and the institution must have received grant-in-aid from the government for payment of salary to such teacher. The State Government cannot, therefore, be made liable to pay arrears of salary to a teacher whose sendees were wrongly terminated by the management. The liability to pay consequent to the setting aside of the illegal termination should be fastened only on the respondent educational society and not on the State Government. The petitioner is not employed in any Profit Making Industry. She is also not a public servant. As an employee of an aided institution, consequent to the setting aside of the termination order, the employee cannot as right claim all arrears of salary. An exception in this respect has been made by the Supreme Court in the cases of employees of aided educational institutions. See the following observations in the case of *Kayastha Pathshala, Allahabad and Another Vs. Rajendra Prasad and Another*,

"In educational institutions, the Court cannot focus only on the individual forgetting all else. The Court must have regard to varying circumstances in the academic atmosphere and radically changed position of the individual sought to be reinstated. The Court must have regard to interests of students as well as the institution."

In the aforesaid case of the Supreme Court with the above observation, exonerating completely the State Government from the liability towards back wages, the relief of reinstatement was refused to the teacher for his long absence from teaching work in the school and only a relief of salary of three years was granted by way of damages. In the case before us, the petitioner cannot be deprived of the relief of reinstatement in service as it cannot be said that she has rendered herself unfit for doing teaching work in a primary school. She is, however, partly to be blamed for the adamant attitude adopted by her in insisting for working only as in-charge teacher. In the circumstances in our opinion, in addition to the relief of reinstatement, the petitioner can be granted back wages only for three years, so that she is substantially compensated for the damages suffered as a result of her illegal termination. In giving only a partial relief we wish to safeguard the institution from being financially burdened

beyond its means. In awarding or granting relief of back wages to a teacher of a private school receiving only grant-in-aid from the government, the interests both of the teacher and taught have to be evenly safeguarded so as to ensure smooth functioning of the educational institution. Any such relief of back wages which may financially cripple the institution and result in its closure has to be avoided. As held by the Supreme Court in the case of *The Kayastha Pathashala, Allahabad* (supra), the institution has to be saved and the interest of the students in such cases is of utmost importance. The above aspect of the case compels us to grant to the petitioner along with reinstatement only partial relief of back wages for the past three years at the rate of salary per month last drawn by her.

In the result the petition is partly allowed. The impugned order dated 8-11-1981 (Annexure-B) terminating petitioner's services as teacher in the school is hereby quashed and she is directed to be reinstated in the school as a teacher. She shall, however, be entitled to three years back wages as teacher consequent to her reinstatement. In view of the partial success, the parties shall bear their own costs of this petition. The security amount, if deposited be refunded to the petitioner.